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February 17, 2021

The Honorable Kumar P. Barve, Chairman
House Environment and Transportation Committee
Room 251 House Office Building
Annapolis, MD. 21401

RE: House Bill 960 - Landlord and Tenant – Lease Agreements – Estoppel Certificates and Subordination, Non-Disturbance, and Attornment Agreements
UNFAVORABLE

Dear Chairman Barve, Delegate Conaway and Members of the Committee,

I am writing on behalf of my client, the Building Owners and Managers Association of Greater Baltimore (BOMA), in opposition to House Bill 960.

BOMA, through its nearly 300 members, represents owners and managers of all types of commercial property, comprising 143 million square feet of office, industrial and mixed use space in Baltimore and Central Maryland. BOMA members' facilities support over 19,000 jobs and contribute \$2.5 billion to the Maryland economy each year.

BOMA's objection to this legislation is limited to its application to commercial leases. Residential leases don't generally have requirements for estoppel certificates or subordination, non-disturbance and attornment ("SNDA") agreements, therefore this bill appears to be directed solely at commercial leases. If the bill is amended to apply only to residential leases, BOMA will withdraw its opposition.

By way of background, estoppel certificates are used by a landlord when it wants to either sell or refinance its building. An estoppel certificate is sent to a tenant and contains a number of statements in it which the landlord wants the tenant to confirm (for example, the date of the lease, term, rental amount, amount of the deposit, whether there are any defaults, etc.). The estoppel certificate is written for the benefit of the buyer or lender and is designed to keep the tenant from taking a contrary position thereafter. This gives the assurance to the lender or buyer that the lease terms are acknowledged and understood. The terms of estoppel certificates are often negotiated between landlord and tenant.

An SNDA is a three party document (landlord, tenant and lender), and provides for a tenant to subordinate the lease to the lien of a mortgage so that the mortgage controls. Most lenders will require it in any mortgage financing.

Virtually every commercial, industrial and retail lease requires that the tenant sign an estoppel certificate and/or SNDA when presented by the landlord. Failure to sign and return an estoppel certificate and/or SNDA would constitute an event of default. In this way, the landlord preserves the ability to enter into financing and or to sell the building and has the leverage over the tenant so that the tenant will cooperate in that process.

In commercial leasing, it is an accepted business practice to use both estoppel certificates and SNDA agreements. If enacted, HB 960 would be highly disruptive to the commercial leasing process. Because these provisions can be negotiated

between commercial landlord and tenant, there is no need to alter their current use. Additionally, there is no definition in the bill of either estoppel certificate or SNDA, thus leaving the interpretation of those terms as an area of potential dispute.

For these reasons, BOMA respectfully requests an unfavorable report on House Bill 960.

Very truly yours,

A handwritten signature in black ink that reads "Bryson Popham". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Bryson F. Popham, Esq.

cc: The Honorable Frank M. Conaway, Jr. at conaway@house.state.md.us
Kevin J. Bauer